

Safety Risk Justifies Short-Notice Clearing of Homeless Encampments Along a Freeway

05.16.2022

Caltrans's efforts to clear high risk homeless encampments along the freeway on short notice without relocating or housing the occupants did not violate the Americans With Disabilities Act ("ADA").

In *Where Do We Go Berkeley v. California Department of Transportation*, the Ninth Circuit Court of Appeals invalidated a trial court injunction that had required Caltrans to wait six months to allow relocation of the encampment occupants before clearing high risk homeless encampments along the freeway.

Caltrans assigns each homeless encampment on its property a priority level based on its threat to public safety. "Level 1" encampments are the highest priority encampments, which pose critical safety concerns and require urgent clean-up for the safety of drivers and the encampments' occupants. Caltrans provides level 1 encampments 72 hours' notice before clearing because "the risks posed by the encampment are too urgent to allow campers to stay." Caltrans planned to clear level 1 high risk encampments along the freeway in Berkeley and gave notice of its intent to do so. An advocacy group sued and obtained an injunction based on the claim that residents were disabled and clearing the encampments quickly would violate the ADA. The trial court enjoined Caltrans from proceeding for six months.

The Ninth Circuit determined that the balance of hardships favors Caltrans's efforts to clear the high risk encampments. The Court noted that for level 1 encampments, "time is of the essence" and "addressing urgent safety risks is the primary goal," and held that a six-month delay in clearing the high risk encampments sought by the plaintiffs would fundamentally alter Caltrans's program for level 1 encampments and not be a "reasonable modification" to its program required under the ADA. The Court explained that by halting the program for six months, the trial court "effectively asks Caltrans to house Plaintiffs on its property until Plaintiffs found new housing, with no regard to the safety risks that make clearing level 1 encampments so critical."

ATTORNEYS

David Lim

Jennifer Petrusis

It should be noted that this case does not alter the Ninth Circuit's holding in *Martin v. City of Boise*, which is limited to situations in which criminal penalties are threatened or citations are issued to homeless individuals sleeping on public property in violation of anti-camping regulations. *Where Do We Go Berkeley* is consistent with the holding of *Martin v. City of Boise* that governmental agencies retain authority to address health and safety problems at homeless encampments.

If you have any questions, or would like more information about how this decision may affect your agency, please contact **Jennifer Petrusis**, **David Lim**, or **Darrelle Field**.